

16A C.J.S. Constitutional Law § 796

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Constitutional Law

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PART III. Overview of Protected Personal Rights and Freedoms; Police Power

IX. Personal, Civil, and Political Rights and Freedoms

C. Personal Liberty

3. Right to Travel

b. Particular Applications

§ 796. Relating to driving

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law  1280 to 1282, 1285 to 1288

The right to drive, as opposed to the right to travel, is not a fundamental constitutional right.

In contrast to the right to travel, the right to drive is not a fundamental constitutional right¹ but a privilege.² Whenever an individual chooses to drive an automobile in a state, he or she surrenders his or her individual liberties to the extent necessary for compliance with relevant traffic statutes and ordinances that are necessary for the general welfare of the public.³ Revocation of the privilege to operate a motor vehicle on public roadways may properly be based on noncompliance with statutory law, and revocation is not an infringement on the revokee's right to travel.⁴

A state's enforcement of valid traffic laws does not violate motorists' constitutional right to travel,⁵ as a state legislature has constitutional police power to ensure safe drivers and safe roads.⁶ The constitutional right to travel

through a state is not a right to travel in any manner one wants, free of state regulation, and it does not give travelers the right to ignore the state's traffic laws at their discretion.⁷

Statutes imposing certain insurance requirements,⁸ requiring that vehicles be registered⁹ and inspected,¹⁰ imposing gasoline taxes¹¹ and transit tolls,¹² requiring motorcyclists to wear protective headgear,¹³ prohibiting motor vehicle operators from wearing headphones while driving,¹⁴ requiring that drivers have valid operators' licenses,¹⁵ denying a driver's license for a valid reason,¹⁶ imposing speed limits,¹⁷ and providing for the revocation or suspension of driving privileges for violations of traffic laws¹⁸ or nonpayment of civil judgments arising out of an automobile accident¹⁹ have been upheld against challenges that they violate the right to travel. A government's operation of a toll road likewise does not violate the right to travel.²⁰

Some "cruising" ordinances, prohibiting repetitive driving in certain areas between certain hours, have been upheld²¹ while others have been struck down as violative of the right to travel.²²

Other official acts, such as the imposition of a restrictive road block,²³ have been held to violate the right to travel freely on public highways.

CUMULATIVE SUPPLEMENT

Cases:

State law requiring each motor vehicle driver to hold a valid driver's license is not facially unconstitutional restriction on exercise of purported fundamental right to travel. 29–A M.R.S.A. § 2412–A(1–A)(A, D). *State v. Pelletier*, 2015 ME 129, 125 A.3d 354 (Me. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Miller v. Reed*, 176 F.3d 1202, 163 A.L.R. Fed. 739 (9th Cir. 1999).
 Ariz.—*Knapp v. Miller*, 165 Ariz. 527, 799 P.2d 868 (Ct. App. Div. 1 1990).
 Fla.—*State v. Wells*, 965 So. 2d 834 (Fla. 4th DCA 2007).
 Ill.—*Guerrero v. Ryan*, 272 Ill. App. 3d 945, 209 Ill. Dec. 408, 651 N.E.2d 586 (1st Dist. 1995).
 N.Y.—*Allen v. New York State Dept. of Motor Vehicles*, 45 Misc. 3d 475, 991 N.Y.S.2d 701 (Sup 2014).
 Wis.—*State v. Wintlend*, 2002 WI App 314, 258 Wis. 2d 875, 655 N.W.2d 745 (Ct. App. 2002).
- 2 Fla.—*State v. Wells*, 965 So. 2d 834 (Fla. 4th DCA 2007).
 Wis.—*Brandmiller v. Arreola*, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- 3 Wis.—*Brandmiller v. Arreola*, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- 4 Mont.—*State v. Skurdal*, 235 Mont. 291, 767 P.2d 304 (1988).

Tex.—Carter v. State, 702 S.W.2d 774 (Tex. App. Fort Worth 1986), petition for discretionary review refused, (Sept. 17, 1986).

Even if officer focuses on out-of-state license plates

U.S.—U.S. v. Hare, 308 F. Supp. 2d 955 (D. Neb. 2004).

N.D.—City of Bismarck v. Stuart, 546 N.W.2d 366 (N.D. 1996).

As to the exercise of the police power in the context of constitutional liberty interests, see § 782.

As to the police power, generally, see §§ 699 to 720.

U.S.—U.S. v. Hare, 308 F. Supp. 2d 955 (D. Neb. 2004).

Cal.—Quackenbush v. Superior Court (Congress of California Seniors), 60 Cal. App. 4th 454, 70 Cal. Rptr. 2d 271 (1st Dist. 1997), as modified on denial of reh'g, (Jan. 23, 1998).

Idaho—Gordon v. State, 108 Idaho 178, 697 P.2d 1192 (Ct. App. 1985).

Minn.—State v. Cuypers, 559 N.W.2d 435 (Minn. Ct. App. 1997).

U.S.—Kaltenbach v. Breaux, 690 F. Supp. 1551 (W.D. La. 1988) (Louisiana law).

Cal.—Halajian v. D & B Towing, 209 Cal. App. 4th 1, 146 Cal. Rptr. 3d 646 (5th Dist. 2012).

N.C.—State v. Sullivan, 209 N.C. App. 756, 710 S.E.2d 709 (2011).

Ohio—Village of St. Paris v. Galluzzo, 2014-Ohio-3260, 2014 WL 3731846 (Ohio Ct. App. 2d Dist. Champaign County 2014).

U.S.—Kaltenbach v. Breaux, 690 F. Supp. 1551 (W.D. La. 1988) (Louisiana law).

U.S.—Miller v. Reed, 176 F.3d 1202, 163 A.L.R. Fed. 739 (9th Cir. 1999).

U.S.—Angus Partners LLC v. Walder, 2014 WL 4639552 (S.D. N.Y. 2014).

Colo.—Love v. Bell, 171 Colo. 27, 465 P.2d 118 (1970).

Me.—State v. Quinnam, 367 A.2d 1032 (Me. 1977).

Ohio—State v. Varsel, 2014-Ohio-1899, 11 N.E.3d 327 (Ohio Ct. App. 6th Dist. Fulton County 2014).

U.S.—Merring v. Bozym, 2008 WL 5378280 (M.D. Pa. 2008).

Cal.—Halajian v. D & B Towing, 209 Cal. App. 4th 1, 146 Cal. Rptr. 3d 646 (5th Dist. 2012).

Idaho—Gordon v. State, 108 Idaho 178, 697 P.2d 1192 (Ct. App. 1985).

Kan.—State v. Hershberger, 27 Kan. App. 2d 485, 5 P.3d 1004 (2000).

N.D.—City of Bismarck v. Stuart, 546 N.W.2d 366 (N.D. 1996).

Utah—Farmington City v. Lake, 2013 UT App 144, 304 P.3d 881 (Utah Ct. App. 2013).

Wash.—State v. Clifford, 57 Wash. App. 127, 787 P.2d 571 (Div. 3 1990).

U.S.—Miller v. Reed, 176 F.3d 1202, 163 A.L.R. Fed. 739 (9th Cir. 1999).

Idaho—State v. Wilder, 138 Idaho 644, 67 P.3d 839 (Ct. App. 2003).

Tex.—Barcroft v. State, 881 S.W.2d 838, 24 U.C.C. Rep. Serv. 2d 1071 (Tex. App. Tyler 1994).

Colo.—Heninger v. Charnes, 200 Colo. 194, 613 P.2d 884 (1980).

N.Y.—Hauptman v. New York State Dept. of Motor Vehicles, 158 A.D.2d 600, 551 N.Y.S.2d 572 (2d Dep't 1990).

Vt.—Boutin v. Conway, 153 Vt. 558, 572 A.2d 905 (1990).

U.S.—Ross v. Gunaris, 395 F. Supp. 623 (D. Mass. 1975); Shultz v. Heyison, 439 F. Supp. 857 (M.D. Pa. 1975).

U.S.—Miller v. Reed, 176 F.3d 1202, 163 A.L.R. Fed. 739 (9th Cir. 1999).

U.S.—Lutz v. City of York, Pa., 692 F. Supp. 457 (M.D. Pa. 1988), aff'd on other grounds, 899 F.2d 255, 87 A.L.R.4th 1081 (3d Cir. 1990).

Wis.—Brandmiller v. Arreola, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

Minn.—State v. Stallman, 519 N.W.2d 903 (Minn. Ct. App. 1994).

N.J.—State v. Barcia, 228 N.J. Super. 267, 549 A.2d 491 (Law Div. 1988), order aff'd, 235 N.J. Super. 311, 562 A.2d 246 (App. Div. 1989).